

REMARKS/ARGUMENTS

Claims 1-20 are pending in the present application. Claims 1, 6, and 9 have been amended. Claims 1, 6, and 9 are independent claims. The Examiner is respectfully requested to reconsider his rejections in view of the Amendments and the following Remarks.

Rejection Under 35 U.S.C. § 102

Claims 1-5, 7-13, and 17-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,995,490 to Shaffer et al. (hereinafter Shaffer '490). This rejection is respectfully traversed.

As set forth in Section 2131 of the MPEP Original Eighth Edition, August, 2001, page 2100-68:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. Of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claims." *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USQP2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that Shaffer '490 does not set forth each and every element as defined in independent claims 1 and 9.

Examiner's Interpretation of Claimed Elements

In the Amendment filed on May 26, 2004, Applicants argued that claims 1 and 9 recite producing line state information that indicates a detected line state for each of a plurality of communication lines, and independently selecting an operation mode for each of the communication lines based on the line state information.

In page 14 of the Office Action, the Examiner responds to Applicant's argument by stating that the aforementioned features are all directed toward "Intended Uses." Specifically, the Examiner asserts that the following features are intended uses because they begin with "for":

- (i) "...for detecting a lines state relating to transmission quality in each of a plurality of communication lines and producing line state information indicating"; and
- (ii) "...independently select, for each of the communication lines..."

The Examiner seemingly takes the position that any use of the word "for" in a claim indicates that the corresponding element is an intended use, and therefore can be ignored.

However, Applicants wish to point out that the use of the word "for" in feature (ii) is not used to indicate an intended purpose. As used in feature (ii), "for" means "with respect

to." Furthermore, feature (ii) is recited in claims 1 and 9 in the following context of claims 1 and 9:

"...the transmission control unit is configured to[] independently select, for each of the communication lines, a specific operation mode."

Applicants respectfully submit that such a feature must be given patentable weight. As indicated in MPEP § 2173.05(g), in a claim directed to a kit of component parts capable of being assembled, the Court held that features such as "members adapted to be positioned" serve to precisely define structural attributes. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976). It is respectfully submitted that the "configured to" language in the present claims is similar to the "adapted to" language cited in *Venezia* and, thus, must be given proper consideration by the Examiner.

With respect to feature (i), MPEP § 2173.05(g) also states the following:

A functional limitation is an attempt to define something by what it does, rather than by what it is e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms...A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. (emphasis added)

Accordingly, Applicants respectfully submit that the Examiner cannot ignore a claimed feature merely because it recites a function.

However, in order to respond to the Examiner's concern that feature (i) only recites an intended use, Applicants have amended claims 1 and 9 to recite "a line state monitoring unit that detects a line state...and produces line state information." By amending claims 1 and 9 as such, Applicants do not concede that the Examiner's above interpretation of feature (i) is correct and that such amendment is necessary to overcome the rejection. However, Applicants have amended claims 1 and 9 in an effort to expedite prosecution.

Therefore, Applicants respectfully submit that none of features (i) and (ii) can be dismissed from consideration by the Examiner because they are directed to intended uses.

Claimed Elements Not Taught by Shaffer '490

In page 14 of the Office Action, the Examiner asserts that:

Shaffer '490 has the capability of using plural lines and, therefore, can achieve [features (i) and (ii)]. In particular, Shaffer '490 at Col. 4, lines 51-55 inherently teaches that more than one transmission line can be used.

In col. 4, lines 51-55, of Shaffer '490 discloses the following:

For example, if a single channel is used to transfer both the video transmissions and the data transfers, the video

QoS can be at a higher level when the file transfer devices 32 and 34 are inactive.

The Examiner presumably interprets this section of Shaffer '490 seems as indicating that the use of a single channel for transmitting both video and data is a particular example of the system in Shaffer '490. The Examiner apparently infers that an alternative example of Shaffer '490 exists where multiple channels or lines are used.

Even if such an inference can be made, Applicants respectfully submit that the most that can be inferred is that Shaffer '490 includes an alternative embodiment where one channel is used to transfer video, and a separate channel is used for data transfers. Applicants further wish to point out that Shaffer '490 only discloses monitoring the video QoS level. There is no teaching in Shaffer '490 for analyzing a QoS for both video and data transfers.

Thus, assuming for the sake of argument that Shaffer '490 implicitly discloses that separate video transmission and data transmission lines are used, Applicants respectfully submit that Shaffer '490 fails to disclose producing line state information for both lines, and independently selecting an operating mode for each of these lines based on the line state information, as required by claims 1 and 9.

At least for the reasons set forth above, Applicants respectfully submit that claims 1 and 9 are allowable over the cited prior art. Furthermore, Applicants submit that claims 2-5, 7, 8, 10-13, and 17-20 are allowable at least by virtue of their dependency on claims 1 and 9. Thus, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Rejection Under 35 U.S.C. § 103

Claims 6 and 14-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shaffer '490 in view of U.S. Patent No. 5,898,668 to Shaffer (hereinafter Shaffer '668). This rejection is respectfully traversed.

Applicant respectfully submits independent claim 6 recites features similar to those discussed above in connection with claims 1 and 9. Furthermore, claims 14-16 incorporate the features of claim 9 by virtue of their dependency on claim 9.

Applicants respectfully submit that Shaffer '668 fails to remedy the deficiencies of Shaffer '490 set forth above in connection with claims 1 and 9. It is respectfully submitted that claims 6 and 14-16 are allowable, at least for reasons similar to those discussed above in connection with claims 1 and 9. Thus, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Conclusion

In view of the above Remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination. Thus, it is respectfully requested that the Examiner issue a Notice of Allowance in connection with the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #39,491
D. Richard Anderson, #40,439


DRA/JWR/kpc

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000